

**Statement of
The Honorable Elijah Cummings
Subcommittee on the Coast Guard and Maritime Transportation
Hearing On
“Federal Maritime Commission
Management and Regulation of International Shipping”
June 19, 2008**

Today, the Subcommittee convenes for a second hearing on the Federal Maritime Commission.

The Subcommittee held its first hearing on the Commission in the 110th Congress in April of this year. At that time, there were four Commissioners, and in the absence of a Chairman, all four were collectively responsible for administrative decisions as well as for deciding on the regulatory issues brought before the Commission. However, the Commission rarely held public hearings and testimony suggested that the four Commissioners had limited visibility over the functioning of the Commission.

Additionally, responses to the Federal Human Capital Survey suggested that employees at the Commission had deep concerns about a number of issues, including the effectiveness of the management exercised by senior leadership, fairness in the resolution of disputes and complaints, and the ability of the Commission to recruit qualified personnel.

Between April and today's hearing, the Commission has begun convening regular public meetings. Further, Mr. Paul Anderson, who had been serving as a Commissioner and had been nominated by the President to be Chairman of the Commission, has resigned from the Commission and withdrawn his nomination to be Chairman.

We look forward to hearing the testimony of the three current Commissioners regarding the steps that they are taking to effectively administer the Commission and conduct the Commission's business.

We will also receive testimony from Mr. Donald Cole, a consultant who had been hired by the FMC's former Chairman to lead a strategic planning initiative at the Commission. As a prelude to the strategic planning effort, Mr. Cole conducted an organizational analysis that uncovered findings that in many ways echo the concerns expressed by Commission employees in the Federal personnel survey.

The effective functioning of the Commission is critical because it must be prepared to respond to the dramatic changes that are occurring in the international shipping arena. The organization of the maritime industry, and the pricing of carrier services, are unique and are, to be frank, generally contrary to the standards of competitiveness within an open market system that most other industries are required to observe.

Tariffs for ocean freight transportation have historically been set by cartels of liner services, often called "conferences." In 1916, Congress passed a Shipping Act that formally sanctioned the existing cartel system by granting immunity from anti-trust requirements in

certain circumstances for the tariff decisions and other actions taken by ocean common carriers acting in collusion with one another. In 1961, Congress enacted legislation to require that the agreements decided by cartels be filed with the Federal Maritime Commission, which was established by legislation as the successor to the U.S. Shipping Board. The FMC was empowered to reject those agreements that were found to be “contrary to the public interest,” but many in the industry complained that the FMC often took years to grant approval.

Congress revisited the regulation of ocean shipping by enacting the Shipping Act of 1984. This Act took a first step toward the introduction of pro-market competition in rate setting by allowing carriers to enter into service contracts with shippers; however, the cartels still often limited the ability of carriers to sign such agreements.

At the same time, the Shipping Act altered the FMC’s authorities by eliminating the power of the Commission to reject agreements that were not found to be in the public interest. Instead, agreements filed with the Commission were allowed to go into force unless challenged by the Commission as being likely to reduce competition or lead to “an unreasonable reduction in transportation service or an unreasonable increase in transportation cost.”

The Shipping Act of 1984 was subsequently amended by the Ocean Shipping Reform Act of 1998, which allowed carriers to establish confidential service contracts without the approval of conferences and without the disclosure of the negotiated rates. Nonetheless, the Act did not eliminate the conference system and the Act continued to grant anti-trust immunity to many acts taken by carriers acting in collusion with one another.

The European Union is now taking the next step in the deregulation process and will eliminate its so-called “block immunity” for ocean carriers in October of this year. As a result, carriers will no longer be able to collude in the establishment of tariffs for service to Europe. At present, anti-trust immunity will continue to be granted by the European Union for other types of agreements among carriers relating to service provision. The full effects that this move will have on international shipping, and particularly on ocean carrier service to the U.S. market, remain to be seen but will certainly be critical.

The witnesses who will appear on our third panel today will present multiple perspectives on this issue. Some will argue that the maritime transportation market continues to have characteristics that require it to be exempted from competition requirements, and they will argue that anti-trust immunity enables carriers and other actors in the maritime industry to address critical public policy issues, such as congestion and air quality around ports, that they would not or could not address on their own. Others will argue that the United States should follow the EU’s move by eliminating anti-trust immunity for ocean common carriers because carriers are constraining the ability of shippers to move their products to foreign markets and because the anti-trust immunity allows them to charge rates higher than would be charged in a purely competitive market.

This is one of the most critical issues facing not only international shipping today but really the American economy, which is so dependent on ocean common carrier services to move the cargoes that keep our economy moving. I look forward to the testimony of today’s witnesses and also look forward to continuing to examine this issue as data recording the impact of the EU’s actions become available.